

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

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City of Richardson, Texas

Request for Clarification or Declaratory Ruling  
Concerning Public Safety Answering Point  
Requests for Phase II Enhanced 911

CC Docket No. 94-102

COMMENTS OF VOICESTREAM WIRELESS CORPORATION

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## Table of Contents

I.	Introduction and Summary.....	1
II.	Discussion.....	4
A.	Richardson Seeks a Rule Change, Not a Rule “Clarification”.....	5
B.	The Commission Cannot Grant the Richardson Request Without Commencing a New Rulemaking .....	8
C.	There Is No Reason to Commence a New Rulemaking Because the Rule Change Richardson Seeks Would Delay Introduction of E911 Service .....	10
D.	The Commission Could Make Several Clarifications That Would Eliminate Controversy and Accelerate Phase II Deployment.....	15
E.	VoiceStream Encourages PSAPs with Executed Phase II Equipment/Network Contracts to Provide Early Notice to Carriers..	16
F.	VoiceStream’s Plans to Prioritize Requests .....	18
III.	Conclusion .....	20

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**COMMENTS OF VOICESTREAM WIRELESS CORPORATION**

VoiceStream Wireless Corporation (“VoiceStream”) submits these comments in response to the petition filed by the City of Richardson, Texas (“Richardson”), which purports to seek “clarification” concerning the process by which a Public Safety Answering Point (“PSAP”) requests Phase II enhanced 911 (“E911”) service.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

The relief Richardson seeks involves an approach that the Commission has already considered and rejected. The Commission’s decision made sense in 1996, and that decision has proven to make even more sense given subsequent developments. Adoption of Richardson’s proposal would have the effect of delaying the timely introduction of Phase II E911 service to the degree that carriers would be required to allocate finite resources to PSAPs that are not Phase II capable.

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<sup>1</sup> See *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on Request for Clarification or Declaratory Ruling Concerning Public Safety Answering Point Requests for Phase II Enhanced 911,” CC Docket No. 94-102, DA 01-886 (April 5, 2001). See also *City of Richardson, Petition for Clarification and/or Declaratory Ruling*, CC Docket No. 94-102 (April 5, 2001)(“Richardson Petition”).

In its original 1996 E911 order, the Commission ruled that a carrier's E911 obligations was not triggered until a PSAP "*is capable* of receiving and utilizing the data elements associated with the service."<sup>2</sup> During the reconsideration proceeding, the PSAP community asked the Commission to change the arrangement so that the parties deploy their E911 capabilities "together, rather than in sequence."<sup>3</sup> In its reconsideration order, however, the Commission nonetheless decided to "retain" the "is capable" provision to "ensure that carriers are not required to make unnecessary expenditures in response to a PSAP that is not ready to use the E911 information."<sup>4</sup>

Richardson now repeats the request that the PSAP community made unsuccessfully in the past. Specifically, it wants the Commission to change the "is capable" trigger into a "will be capable" trigger so that carriers would be required to begin their conversion/connection activities based solely on a PSAP "representation" that it "will have the upgrades completed by the time the carrier delivers the service."<sup>5</sup>

This approach makes no sense. There are approximately 7,000 PSAPs nationwide. Under Richardson's proposed "representation" trigger, PSAPs would face no penalty by making premature requests. Carriers simply do not have the resources to convert

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<sup>2</sup> See 47 C.F.R. § 20.18(f), *today codified at* § 20.18(j)(emphasis added). See also *First E911 Order*, 11 FCC Rcd 18676, 18710 ¶ 66 (1996)("[N]o waiver request is required if the PSAP has not made the necessary investment to provide the capability of receiving the information transmitted under Phase I *since the carrier's obligation does not arise until this point.*"); at 18722 ¶ 89 ("[C]arriers and government officials uniformly recognize . . . that carriers should not be required to provide E911 capability *unless a PSAP is capable* of receiving the associated data elements.")(emphasis added).

<sup>3</sup> Opposition and Comments of NENA, APCO and NASNA, Docket No. 94-102, at 6 (Oct. 8, 1996).

<sup>4</sup> *Second E911 Reconsideration Order*, 14 FCC Rcd 20850, 20879 ¶ 69 (1999). See also *id.* ("Carriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP. . . . [T]he PSAP and the carrier benefit from a requirement that is not triggered *until the actual time at which the PSAP can take advantage of the E911 service.*")(emphasis added).

<sup>5</sup> Richardson Petition at 2.

hundreds of PSAPs simultaneously. If industry follows a “first-in, first-out” schedule, carriers invariably will expend valuable resources towards converting an unknown percentage of PSAPs that will not, in fact, be ready to accept Phase II data flows. The result: there will be PSAPs that are Phase II capable but will not be converted in a timely fashion. The public interest is not promoted by such a gross misdirection of vital resources.

While the Commission’s “is capable” trigger made sense in 1996, it makes even more sense today. Under the original E911 plan (supported by the PSAP community), PSAPs were to pay for carrier E911 costs. Thus, if a carrier expended resources concerning a PSAP that was not ready, at least it would recover its conversion costs even if the PSAP was incapable of using the Phase II data elements. But with the removal of the cost recovery requirement, carriers will no longer recover their conversion costs. With this subsequent change, PSAPs will incur no penalty whatsoever by forcing a carrier to convert prematurely its network to Phase II in the PSAP’s serving area.

The likelihood that PSAPs will not be Phase II capable as they “represent” is both real and substantial. There were dozens of situations all over the country during the Phase I conversion where PSAPs did not timely upgrade their CPE and networks. For example, as of last month, sixteen TX-CSEC PSAPs still were not Phase I capable — over a year after they represented that they were capable (not “will be” capable).

The issue does not relate to the integrity of PSAP officials. The issue rather is that others (e.g., town/county councils, state agencies) often make critical financial and procurement decisions affecting PSAP upgrades. Acquiring the necessary funding and thereafter acquiring the necessary CPE/network upgrades often takes far longer than what PSAPs initially expect. The economic downturn and slow down in government tax re-

ceipts has been widely reported. This economic uncertainty undoubtedly will put PSAP upgrade funding at risk.

Indeed, this situation of unrealized expectations is demonstrated by the facts of this case. Over a year ago Richardson “represented” that it “will be” Phase II capable by October 1, 2001. This deadline is now only five months away. To VoiceStream’s knowledge, the Richardson PSAP still has not received funding necessary to upgrade its CPE and E911 network, nor has it issued a RFP for this new equipment. Thus, while the Richardson PSAP may have truly believed last year that it would be Phase II compatible by October 2001, it will almost certainly not achieve Phase II readiness by this date.

The issue is one of priorities. Carriers should focus their conversion efforts on those PSAPs that demonstrate their upgrade commitment and are Phase II capable. VoiceStream encourages PSAPs to contact it when they release their RFPs for Phase II CPE/network upgrades so it can place the PSAP “in queue” because, depending on commitments to PSAPs already upgraded, VoiceStream should be able to commence work on these “RFP issued” PSAPs. But as the Commission has repeatedly held, no purpose is served by requiring carriers to squander resources by converting areas where the PSAP has not upgraded its CPE and network and, as a result, would be incapable of using the Phase II data elements.

## **II. DISCUSSION**

As discussed below, Richardson seeks a rule change, not a rule “clarification,” and the Commission cannot grant the petition without issuing a new notice of proposed rulemaking consistent with the requirements of the Administrative Procedures Act.

There is no reason for the Commission to take this step, however, because the relief Richardson seeks would be unsound policy, with carriers diverting valuable resources from PSAPs that would be Phase II capable to PSAPs that would not be Phase II capable. Carriers should retain the right and the obligation to time the delivery of Phase II service to those PSAPs that have demonstrated that they have the capability to use Phase II service.

**A. RICHARDSON SEEKS A RULE CHANGE, NOT A RULE  
“CLARIFICATION”**

FCC Rule 20.18(j) specifies that a PSAP request for E911 service is not valid unless, at the time of the request, the PSAP has already installed all necessary equipment and as a result, “is capable” of using the service:

The requirements set forth in . . . this section shall be applicable *only* if the administrator of the designated [PSAP] has requested the services required under those paragraphs and *is capable* of receiving and utilizing the data elements associated with the service, and a mechanism for recovering the [PSAP’s] costs of the enhanced 911 service *is* in place.<sup>6</sup>

Richardson now asks the Commission to “clarify” that, in using the phrase “is capable of utilizing,” it really meant to say “*will be*” capable of utilizing E911 data elements.<sup>7</sup>

According to Richardson, the clarification it seeks is appropriate because the Commission has “not specifically address[ed] whether a PSAP request is valid when a PSAP represents to a carrier that it will have its equipment upgrades finalized by the time

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<sup>6</sup> 47 C.F.R. § 20.18(j)(emphasis added).

<sup>7</sup> See Richardson Petition at 1 (PSAP makes “valid request . . . by informing the carrier that its equipment upgrades . . . *will be* finalized prior to delivery of the service”); at 2 (PSAP “assures . . . it *will have* the upgrades completed prior to . . . delivery of Phase II service”); at 5 (PSAP “commits in its request to the carrier that it *will have* the necessary equipment upgrades finalized by the time that the carrier delivers the service”)(emphasis added).

Phase II service is delivered to the PSAP.”<sup>8</sup> Richardson is mistaken. In fact, the Commission addressed this very point only 18 months ago when it decided to “retain” the “is capable” provision to “ensure that carriers are not required to make unnecessary expenditures in response to a PSAP that is not ready to use the E911 information”:

Carriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP. . . . [T]he PSAP and the carrier benefit from a requirement that is *not triggered until the actual time at which the PSAP can take advantage of the E911 service*.<sup>9</sup>

While carriers must respond promptly to valid PSAP requests, the Commission emphasized that it “expect[s] prompt deployment when a PSAP *with the necessary capabilities* request[s] service.”<sup>10</sup>

The “is capable” trigger for a valid PSAP request is not new. The Commission recognized five years ago in its original *E911 Order* that “carriers and government officials uniformly recognize . . . that carriers should not be required to provide E911 capability unless a PSAP *is capable* of receiving the associated data elements”:

[T]o the extent that . . . no PSAP Administrator has informed the carrier that the PSAP is capable of receiving and utilizing the data elements associated with the service, the . . . carrier will not be obligated to provide E911.<sup>11</sup>

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<sup>8</sup> Richardson Petition at 4.

<sup>9</sup> *Second E911 Reconsideration Order*, 14 FCC Rcd 20850, 20879 ¶ 69 (1999)(emphasis added).

<sup>10</sup> *Id.* at 20857 ¶ 14 (emphasis added).

<sup>11</sup> *First E911 Order*, 11 FCC Rcd at 18684 ¶ 11, 18718 ¶ 84 (emphasis added). See also *id.* at 18674 ¶ 11 (E911 requirements “shall apply only if (1) a carrier receives a request for such E911 services from the administrator of a PSAP that *is capable* of receiving and utilizing the data elements associated with the services.”); at 18710 ¶ 66 (“[N]o waiver request is required if the PSAP has not made the necessary investment to provide the capability of receiving the information transmitted under Phase I *since the carrier’s obligation does not raise until this point*.”); *First E911 Reconsideration Order*, 12 FCC Rcd 22665, 22755 (1997)(PSAPs “must notify the covered carrier that they *are capable* of receiving and utilizing the data elements associated with the service and request the service.”); *Universal Service Order*, 12 FCC Rcd 8776, 8827 n.178 (1997)(“[W]e made the wireless carriers’ obligation to provide E911 service contingent



There is no ambiguity in the obligations imposed by Rule 20.18(j) or in the Commission's interpretation of this Rule. For example, the state agency with principal responsibility for implementing E911 in Texas, the Texas Commission on State Emergency Communications ("TX-CSEC"), has acknowledged that a PSAP request is not valid and that carrier Phase II implementation need not begin until "the PSAPs administered by the 9-1-1 entity *are* capable of receiving and using the data associated with such service."<sup>12</sup>

In fact, the procedures Richardson now favors are procedures the Commission has already considered and rejected. Some time ago, the public safety community specifically asked that E911 implementation not be done in sequence (*i.e.*, PSAP upgrades followed by carrier upgrades and connection), the very argument that Richardson now repeats:

In the Joint Commenters' view, the greater danger to the noble enterprise of upgrading PSAPs, wireline and wireless systems to E9-1-1 compatibility is for any one of these parties to think that it can wait for the other to begin. . . . *Parties are better advised to move forward together, rather than in sequence, and we ask the FCC to reaffirm this.*<sup>13</sup>

The Commission necessarily rejected this position when it later reaffirmed that it "expect[s] prompt deployment when a PSAP *with the necessary capabilities* request[s] service" because "[c]arriers should not be forced to make investments in their networks to provide E911 services that cannot be used by the PSAP."<sup>14</sup>

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on (1) a request from a PSAP that *is capable of receiving and utilizing the data elements associated with the services . . .*")(emphasis added).

<sup>12</sup> TX-CSEC Rule 251.10(b)(2)(B), *available at [www.911.state.tx.us/op/rules](http://www.911.state.tx.us/op/rules)* (emphasis added).

<sup>13</sup> Opposition and Comments of NENA, APCO and NASNA, CC Docket No. 94-102, at 6 (Oct. 8, 1996) (emphasis added).

<sup>14</sup> *Second E911 Reconsideration Order*, 14 FCC Rcd at 20857 ¶ 14 and 20879 ¶ 69 (emphasis added).

The Commission has consistently dismissed as procedurally flawed requests for clarification that challenge decisions made in prior rulemaking orders. As the Commission stated in recently dismissing a declaratory ruling petition:

[I]ndirect challenges to Commission decisions that were adopted in proceedings in which the right to review has expired are considered impermissible collateral attacks and are properly denied.<sup>15</sup>

The Commission similarly has ruled in dismissing as “procedurally deficient” another petition for clarification:

To the extent APCO directly challenges earlier Commission decisions, however, we agree . . . that the [clarification] petition is untimely and as such, is dismissed as defective. Likewise, to the extent it indirectly challenges earlier Commission decisions, . . . the [clarification] petition is also procedurally flawed because it effectively is an impermissible collateral attack on final Commission decisions.<sup>16</sup>

The Richardson request, insofar as it seeks to redefine the “is capable” phrase in Rule 20.18(j) to “will be capable,” constitutes an impermissible attack on final Commission decisions. Based on its own precedent, the Commission has no choice but to dismiss the request as procedurally deficient.<sup>17</sup>

**B. THE COMMISSION CANNOT GRANT THE RICHARDSON REQUEST WITHOUT COMMENCING A NEW RULEMAKING**

The Administrative Procedures Act (“APA”) requires the Commission to issue a notice of proposed rulemaking, published in the Federal Register, before it adopts any

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<sup>15</sup> *Declaratory Rulings Regarding Commission Rules and Policies for Frequency Coordination in the Private Land Mobile Radio Services*, 14 FCC Rcd 12752, 12757-58 ¶ 11 (1999).

<sup>16</sup> *APCO Petition for Clarification*, 14 FCC Rcd 4339, 4344 ¶ 10 (1999). *See also Canyon Area Residents*, 14 FCC Rcd 8152, 8155 ¶ 10, 8156-57 ¶¶ 16-17 (1999)(dismissing statutory arguments as constituting a “collateral attack” that is “not timely”); *Rio Grande Broadcasting*, 14 FCC Rcd 17007 (1999)(dismissing petition as an impermissible collateral attack).

<sup>17</sup> In any event, the Wireless Bureau certainly does not have the authority to grant the request to modify the clear meaning of Rule 20.18(j). *See* 47 C.F.R. § 0.331(d). *See also id.* at § 0.331(a)(2).

new rule.<sup>18</sup> These APA requirements apply as well to “repeals” and “amendments.”<sup>19</sup>

The Supreme Court has further held that compliance with these APA procedures is “required” when an agency “adopts a new position inconsistent with . . . existing regulations.”<sup>20</sup> As the D.C. Circuit Court has similarly declared:

When an agency promulgates a legislative regulation . . . it may not subsequently repudiate that announced meaning and substitute for it a totally different meaning without proceeding through the notice and comment rulemaking normally required for amendments of a rule.<sup>21</sup>

For example, in *Usery v. Kennecott Copper*, 557 F.2d 1113 (10<sup>th</sup> Cir. 1977), the Secretary of Labor adopted a rule specifying that a ladder “shall be provided” when employees work on scaffolds. The Secretary later interpreted this rule as requiring the use of ladders. The appellate court held that the Secretary’s interpretation was invalid and unenforceable because it was made without the conduct of the APA-compliant rulemaking:

We do not agree that the Secretary may read “shall be provided” to mean “shall require use.” In interpreting regulations, one must look at the plain meaning of the words used. . . . A regulation cannot be construed to mean what an agency intended but did not adequately express. If the Secretary were to be permitted to interpret regulations by employing the unusual meaning of words, employers would be deprived of fair notice of that which is expected of them in violation of their due process rights.<sup>22</sup>

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<sup>18</sup> See 5 U.S.C. § 553.

<sup>19</sup> See 5 U.S.C. § 551(5).

<sup>20</sup> *Shalala v. Guernsey Memorial Hospital*, 514 U.S. 87, 100 (1995).

<sup>21</sup> *National Family Planning v. Sullivan*, 979 F.2d 227, 231 (D.C. Cir. 1992). See also *Southwestern Bell v. FCC*, 28 F.3d 165, 169 (D.C. Cir. 1994)(FCC “was bound to follow those statements until such time as it altered them through another rulemaking.”); *Paralyzed Veterans v. D.C. Arena*, 117 F.3d 579, 586 (D.C. Cir. 1997)(“Once an agency gives its regulation an interpretation, it can only change that interpretation as it would formally modify the regulation itself: through the process of notice and comment rulemaking.”).

<sup>22</sup> *Usery v. Kennecott Copper*, 557 F.2d 1113, 1118-19 (10<sup>th</sup> Cir. 1977)(internal citations omitted).

The plain meaning of Rule 20.18(j) is clear: “is capable” means that the PSAP “is capable” of using Phase II E911 service at the time it makes its Phase II request. This plain meaning construction is also consistent with the Commission’s uniform interpretation of the requirement, as noted above. Accordingly, if the Commission wants to change its rule or change its interpretation of the plain meaning of the rule, it must commence a new rulemaking in conformance with the requirements of Section 553 of the Administrative Procedures Act.

**C. THERE IS NO REASON TO COMMENCE A NEW RULEMAKING BECAUSE THE RULE CHANGE RICHARDSON SEEKS WOULD DELAY INTRODUCTION OF E911 SERVICE**

Richardson asks the Commission to modify the sequential process contained in current rules because, it asserts, this procedure constitutes a “wasteful two-step process [that] will cause unwarranted delays”:

VoiceStream’s interpretation, if permitted to stand, will needlessly delay the initiation of Phase II service and will harm the public.<sup>23</sup>

In fact, it is Richardson’s position that would needlessly delay E911 service to the public because carriers will almost certainly be precluded from honoring legitimate Phase II requests to the extent that it complies with earlier, but premature, requests for E911 service.

Under Richardson’s proposal, a PSAP could submit a valid Phase II request simply by “represent[ing] . . . that it will have the upgrades completed by the time the carrier is able to deliver service.”<sup>24</sup> VoiceStream does not question the integrity or intentions of PSAPs, but the fact remains that most of the important decisions are not made by PSAPs

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<sup>23</sup> Richardson Petition at 2.

<sup>24</sup> *Id.* at 3.

(e.g., a city council or state agency will determine whether Phase II funding will be available, and state laws typically require the preparation and release of a Request for Proposal (“RFP”) and a final contract to be in place for new equipment).<sup>25</sup> Thus, a PSAP may truly believe at the time of its request that it will be Phase II capable, but subsequent events outside its control may prevent the PSAP from actually implementing Phase II in the time frame hoped for.<sup>26</sup>

This situation of unrealized expectations is demonstrated by the facts of this case. In March 2000, the Richardson PSAP “represented” to VoiceStream that its equipment upgrades “*will* be finalized prior to the delivery of service by VoiceStream.”<sup>27</sup> To VoiceStream’s knowledge, a year later, the Richardson PSAP still has not received funding necessary to upgrade its CPE and E911 network, nor has it issued a RFP for this new equipment. Thus, while the Richardson PSAP may have truly believed last year that it would be Phase II compatible by October 1, 2001, it will almost certainly not achieve Phase II readiness by this date. This situation of unrealized expectations is also confirmed by VoiceStream’s experience with the implementation of Phase I E911 service.<sup>28</sup>

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<sup>25</sup> VoiceStream does not dispute Richardson’s representation that PSAPs “would have no interest or reason to ask for Phase II service if [they were] not intending to accomplish the equipment upgrades.” Richardson Petition at 5. But the experience with Phase I E911 confirms that there are numerous PSAPs that may genuinely believe they will be E911 capable but which do not actually achieve this objective.

<sup>26</sup> The economic downturn and slow down in government tax receipts has been widely reported. This economic uncertainty undoubtedly will put PSAP upgrade funding at risk.

<sup>27</sup> Letter from Joe Hanna, Captain, Richardson Police Department, to Jim Blundell, VoiceStream, at 1 (March 30, 2000)(emphasis added), *attachment to* Richardson Petition.

<sup>28</sup> There were dozens of instances where PSAPs made Phase I E911 requests, but then dropped the ball (e.g., failed to respond to inquiries seeking identities of selective router and database vendors). In Massachusetts, for example, VoiceStream deployed Phase I trunking and signaling at network launch in 1998 with the understanding that the PSAP or its agents would determine routing, assign pANI numbers, and make ALI database updates. The PSAP still has not taken the actions it had represented it would do and as a result, Massachusetts citizens still do not enjoy the benefits of Phase I service — although VoiceStream has been Phase I capable for three years. Likewise, VoiceStream’s continuing efforts to implement Phase I

Richardson's proposal is inequitable and unsound, and few Phase II conversions would occur in a timely fashion if the Commission were to change its rules.<sup>29</sup> Under the Richardson proposal, hundreds of PSAPs could "represent" immediately that they believe they will be Phase II compatible in six months (*i.e.*, October 23, 2001), when few PSAPs will actually be Phase II compatible by this date, as the public safety community concedes.<sup>30</sup> The reality is that no carrier has the resources to respond to hundreds of PSAP requests over one six-month period. What will happen in this scenario is that carriers will do their best to make as many conversions as possible, but under Richardson's proposed unverified "representation" standard, carriers will not have the flexibility to convert those areas where the PSAPs are truly Phase II compatible because the carriers will have instead wasted their time making conversions in response to earlier requests by PSAPs that did not become Phase II compatible as they had "represented."

A major public safety organization, APCO, has stated that PSAPs that "request Phase II data by 2001 must not be forced to wait until every other PSAP in a carrier's

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with the TX-CSEC PSAPs were hindered when it discovered in March 2001 that despite numerous representations that all were Phase I capable, 16 PSAPs still were not Phase I capable. Similarly, VoiceStream devoted significant resources deploying to the Polk County, Texas PSAP, only to discover after trunk installations and geographic information system ("GIS") work that this PSAP could not receive and display site addresses. Attempts to test Phase I implementation also revealed that San Jacinto, Texas is ANI only and Bell County, Texas cannot display CAS information at all.

<sup>29</sup> Industry faced this very chaos with the TX-CSEC Phase I implementation in Texas. In retrospect, much of this chaos could have been avoided had carriers done a better job of verifying that requesting PSAPs were, in fact, Phase I capable at the time of their request. Subsequent experience confirmed that a number of the PSAPs were not Phase I capable.

<sup>30</sup> See, e.g., APCO Reply Comments, CC Docket No. 94-102, at 3 (July 2, 1999) ("The high costs of implementing Phase II and related problems . . . are some of the principal reasons why few wireless users will have Phase II capability by October 1, 2001."); Comments of APCO, CC Docket No. 94-102, at 2 (July 18, 1999) ("[V]ery few wireless users are likely to have Phase II capability as of October 1, 2001, the original target date. The reasons for this are many, and include the costs for both PSAPs and wireless carriers, technical problems, local exchange carrier impediments.").

service territory is ready to make a similar request.”<sup>31</sup> VoiceStream agrees with APCO, subject to the practical constraints discussed in Part D. below. But by the same token, carriers should not be required to squander time and resources converting and connecting to a PSAP that will not be Phase II capable, when this effort diverts resources from converting and connecting to a PSAP that already is Phase II compliant.

In the end, the issue is one of timing of priorities. A carrier’s finite resources are best devoted to those PSAPs that are already Phase II capable. VoiceStream also will attempt to accommodate situations where a PSAP demonstrates that it has necessary funding and a contract to purchase necessary equipment with a date for delivery and installation, as VoiceStream discusses in Part E. below. But as the Commission has repeatedly held, no public purpose is served by requiring carriers to undertake conversion/connection activity with respect to a PSAP that will not be ready, when this activity diverts resources from completing conversions with PSAPs that are ready.

Two other points merit brief discussion.

First, there is an unfortunate level of rhetorical overstatement by parties to this proceeding that could be minimized by face-to-face meetings of representatives of carriers and PSAP organizations. Commenters hurl allegations with gloomy outcomes back and forth. For example, Richardson’s unsupported assertion that, under the current rules, a carrier will “sit back and do nothing.”<sup>32</sup> VoiceStream replies that it is expending enormous resources toward Phase II implementation. VoiceStream will be deploying by the end of this year, *regardless of PSAP requests*, its Network Software Solution (“NSS”)

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<sup>31</sup> APCO Reply Comments, CC Docket No. 94-102, at 5 (July 2, 1999).

<sup>32</sup> Richardson Petition at 5.

throughout its nationwide network, and it must begin selling by October 1, 2001 handsets that support the more precise Enhanced Observed Time Difference of Arrival (“E-OTD”) solution.<sup>33</sup> VoiceStream will be investing hundreds of millions of dollars to support its various 911 obligations. It is therefore simply not credible for Richardson to assert that, while industry waits for Richardson to become Phase II compliant, VoiceStream will be “sitting back and doing nothing.” It may be time for the Commission to facilitate informal discussions among representatives from carriers and PSAP organizations to reach common sense solutions and to tone down the rhetorical exchange and posturing.

Second, there is much less to Richardson’s proposal than first meets the eye. Richardson alleges that the current arrangement — allowing six months between PSAP readiness and service activation — “will needlessly delay the initiation of Phase II service.”<sup>34</sup> Experience with Phase I implementation confirms that the six-month timeline that the Commission established years ago (without the benefit of any experience) is unrealistically aggressive given the complexity of the conversion and the number of parties involved. Few Phase I orders are implemented within six months. Most PSAPs do not file FCC complaints because, once they become engaged in Phase I implementation details, they quickly learn that additional time is needed by all involved to deploy a quality and reliable service. Phase II implementation is far more complex (and costly) than Phase I implementation and, as a practical matter, few installations will be made within six months, even with all parties using their best efforts.<sup>35</sup> The carriers and PSAPs will

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<sup>33</sup> See *Fourth E911 Reconsideration Order*, 15 FCC Rcd 17422 ¶ 61 (Sept. 8, 2000).

<sup>34</sup> Richardson Petition at 2.

<sup>35</sup> The experience with Phase I implementation suggests that the Commission should increase the response time from six months to nine or 12 months. However, such a rule change may not be necessary as a practi-



work through implementation issues on a local basis without arbitrary guidelines and work rules.

**D. THE COMMISSION COULD MAKE SEVERAL CLARIFICATIONS THAT WOULD ELIMINATE CONTROVERSY AND ACCELERATE PHASE II DEPLOYMENT**

There are three true clarifications that the Commission could make that would eliminate potential controversy and would as a result, accelerate Phase II deployment.

First, some PSAPs appear to believe that they would be “Phase II capable” simply by purchasing off-the-shelf mapping software for their call taker equipment. The Commission should clarify that the phrase in Rule 20.18(j), “is capable of receiving and *utilizing*,” means what its says — namely, a PSAP (or its agents) must modify its maps to reflect latitude and longitude so it is capable of “utilizing” the latitude and longitude data that carriers will be forwarding. Receiving the latitude and longitude of an E911 caller is of no value unless the PSAP has the ability to convert this data into useful geographic information that can be forwarded to the emergency personnel who will respond to the call.

Second, a more common belief among some PSAPs is that they will be “Phase II capable” so long as their CPE is Phase II capable — even though the vendors that operate the PSAP E911 network (*e.g.*, selective routers, ALI databases) are not Phase II capable. The Commission has noted that “it is well established that principals are responsible for the actions of their agents.”<sup>36</sup> If the purpose of the “is capable” trigger is to ensure that

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cal matter because as noted, most PSAPs quickly recognize that E911 cannot realistically be deployed in six months.

<sup>36</sup> *CPNI Reconsideration Order*, 14 FCC Rcd 14409, 14496 ¶ 170 (1999)(internal citations omitted).

carriers are “not . . . forced to make investments in their networks to provide E911 services that cannot be used by the PSAP,”<sup>37</sup> that purpose is served only if a PSAP’s CPE *and its E911 network* are capable of “receiving and utilizing the data elements associated with the [Phase II] service.”<sup>38</sup> The Commission should therefore confirm that the word PSAP in Rule 20.18 refers both to PSAPs and any agents they may use for purposes of installing or operating their CPE or their E911 network.

Third, the Commission should confirm that a carrier need not commence providing E911 service until a service contract is executed. Wireless carriers are precluded by Commission rules from providing service pursuant to tariffs,<sup>39</sup> and they must therefore offer their services pursuant to contract. It is unreasonable to expect a carrier to provide a new capability or service without a contract, and an E911 service contract between the PSAP and carrier is important because the contract defines each party’s responsibilities.<sup>40</sup> A contract is especially important if the PSAP wants the carrier to order and obtain components in the PSAP’s E911 network.

**E. VOICESTREAM ENCOURAGES PSAPS WITH EXECUTED  
PHASE II EQUIPMENT/NETWORK CONTRACTS TO PROVIDE  
EARLY NOTICE TO CARRIERS**

Experience with Phase I confirms that implementation of E911 is complex, particularly given the number of parties involved in the conversion. Implementation of

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<sup>37</sup> See *Second E911 Reconsideration Order*, 14 FCC Rcd at 20879 ¶ 69.

<sup>38</sup> 47 C.F.R. § 20.19(j).

<sup>39</sup> See 47 C.F.R. § 20.15(c). Indeed, the Commission rejected the proposal of one wireless carrier to use E911 tariffs as a means to accelerate the provision of Phase I services. See *Second E911 Reconsideration Order*, 14 FCC Rcd 20850, 20871-72 (1999).

<sup>40</sup> For example, the TX-CSEC requires an executed contract prior to making an E911 request, and this contract is used to set “a wireless service work plan, fee schedule, and standards.” TX-CSEC Rule 251.10(b)(3)(C).

Phase II will be even more challenging given the complexity involved in using new, sophisticated location technology. With finite resources, carrier conversion efforts are best focused on those PSAPs that are Phase II capable, and existing Commission rules ensure this result.

The conversion process will be accelerated if the parties share as much information as possible, as early as possible. It is not known at this time how many PSAPs will convert to Phase II during what period of time. The number of conversions (and therefore, requests) during a given period may exceed what any one carrier can reasonably handle at one time. On the other hand, the number of requests may be manageable, particularly during the first year or so.

VoiceStream's interests, and the interests of its customers, are not served by squandering resources or needlessly delaying E911 conversions. Thus, VoiceStream will begin implementation of Phase II for PSAPs that have firm CPE/E911 network upgrade conversion dates if it can handle these requests while still implementing timely requests from PSAPs that are actually Phase II capable.<sup>41</sup> VoiceStream will take this proactive step with those PSAPs that are willing to share information as to their implementation of Phase II equipment.

Accordingly, VoiceStream encourages PSAPs in its service areas to advise VoiceStream when they have executed purchase contracts to upgrade their CPE and E911 networks to Phase II capability so that VoiceStream can begin putting these requests "in

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<sup>41</sup> From an operational standpoint, it makes sense for a carrier to begin converting PSAPs with firm conversion plans if resources are available so as to reduce the strain if it later becomes inundated with Phase II requests.

queue.” PSAPs also should advise VoiceStream when they have received funding authorization and, when as a result, they are prepared to issue Phase II RFPs.

#### **F. VOICE-STREAM’S PLANS TO PRIORITIZE REQUESTS**

It is not known how many Phase II requests a carrier may receive in any one month. It is possible that a carrier may receive 10 requests in one month, 500 requests the next month, and 250 requests in the third month. Carriers operating in multiple markets cannot be expected to handle such large fluctuations,<sup>42</sup> and they may have a need to prioritize requests during those periods where the volumes of request are unusually large.

In developing priorities, VoiceStream proposes to begin with the “first-come, first served” principle — that is, it will ordinarily convert earlier requests before later requests. Invariably, however, there will be times where the number of requests exceeds the capacity of the carrier to honor all of the requests simultaneously. In these circumstances, VoiceStream proposes to prioritize requests using the following criteria:

- Larger PSAPs will be given priority over small PSAPs;
- Regional conversions (several PSAPs working cooperatively) will be given priority over single PSAP conversions; and
- Areas where VoiceStream has a larger customer base will be given priority over areas where VoiceStream’s customer base is not as large.

CMRS carriers do not have the same footprint coverage and the use of a priority system should actually facilitate Phase II conversions. One of the lessons learned from the Phase I implementation is that PSAPs attempting to convert simultaneously all carriers serving its area unduly complicated the conversion process. E911 implementation is

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<sup>42</sup> Most of the work involved in E911 conversions is not the type of work that can be handled by temporary employees (even assuming a carrier is able to find “temps” with the requisite experience).


ordinarily facilitated when a PSAP successfully converts with one carrier before commencing the conversions with other carriers. Thus, the fact that one or two carriers in a given market may not have the resources at a given time to convert a particular PSAP should not slow down the process in any material way.

### III. CONCLUSION

For the foregoing reasons, VoiceStream respectfully requests that the Commission deny the Richardson petition for "clarification". The Commission cannot grant the relief Richardson seeks without commencing a new rulemaking and, as VoiceStream explains above, there is no reason to commence such a rulemaking. However, there are true clarifications that the Commission could make that would accelerate deployment of Phase II E911 service. VoiceStream has made certain suggestions to address concerns raised by Richardson that will assure that VoiceStream's Phase II resources are focused on the appropriate PSAPs at the appropriate times.

Respectfully submitted

**VoiceStream Wireless Corporation**

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April 23, 2001

### CERTIFICATE OF SERVICE

I, Mary Madigan Jones, hereby certify on that on this 23d day of April 2001, I served a copy of the foregoing Comments of VoiceStream Wireless Corporation by U.S. first-class mail, or by hand delivery as indicated with an \*, to the following persons:

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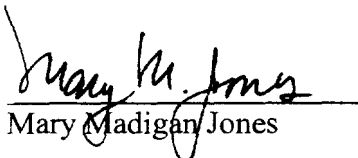
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